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ALLIANCE BANK (M) BHD

v.

LIM SENG TAK

B

HIGH COURT MALAYA, JOHOR BAHRU
SUPANG LIAN J
[CIVIL SUIT NO: 22-56-2005]
15 OCTOBER 2013

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BANKING: *Banks and banking business - Banking regulations - Breach by bank's branch assistant manager - Discrepancies and irregularities in banking transactions - Whether contractual duty of care owed towards bank - Whether there was a breach of duty of care in handling two transactions - Whether bank had right to sue its employee for losses suffered against customers - Whether losses suffered by bank*

D

CONTRACT: *Breach - Negligence - Discrepancies and irregularities in banking transactions - Breach by bank's branch assistant manager - Whether contractual duty of care owed towards bank - Whether there was a breach of duty of care - Whether there was financial losses suffered by bank - Whether bank's guidelines and operational procedures followed - Whether damages awarded*

E

EVIDENCE: *Witness - Material witness - Failure to call - Whether plaintiff withheld evidence - Whether adverse inference invoked against plaintiff - Evidence Act 1950, s. 114(g)*

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The plaintiff was a bank incorporated in Malaysia and the defendant was in the employment of the plaintiff serving in the capacity of an assistant branch manager at the plaintiff's Sri Gading branch at Batu Pahat, Johor ('the Sri Gading branch'). Pursuant to a letter dated 22 July 2004, the defendant tendered his resignation and mentioned 14 August 2004 as his last day of employment. In the meantime, the plaintiff discovered some discrepancies and irregularities in relation to unpaid trade bills by Sri Dickson Garment Sdn Bhd ('Dickson Garment'), a customer of the plaintiff's Sri Gading branch. An internal audit was carried out where the defendant was found to have breached his contractual duties and responsibilities as an assistant manager in handling trade finance transactions involving Dickson Garment. The plaintiff suffered financial losses amounting to RM511,146.39. As a result, the plaintiff commenced the present action against the defendant. The plaintiff's claim was premised on the defendant's breaches of his duty as the assistant branch manager and his negligence in handling two trade transactions. The plaintiff contended that the defendant failed to

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follow the plaintiff's guidelines and operation procedures. The plaintiff contended that the defendant had released shipping documents to Dickson Garment in respect of six inward bills for collection with conditions 'payment at sight' without proof given by Dickson Garment that it had made payment to Zhe Jiang Zhuji Fubang Toys & Shoes Co Ltd China ('Zhe Jiang') *via* its advising bank, the Bank of China ('BOC'). Following a demand from BOC, the plaintiff was obliged to settle the sum to BOC and Dickson Garment had since then failed to pay the sum to the plaintiff resulting in loss to the plaintiff. The second transaction related to an export collection bill ('ECB') for USD42,314.40 in favour of Dickson Garment. The Sri Gading branch sent the ECB to the Bank of America, Singapore ('BA') for payment to be made for the benefit of Dickson Garment. However, the ECB was converted into an export negotiation bill ('EBN') where the plaintiff's branch advanced and credited the full sum of USD42,314.40 into Dickson Garment's current account, without first receiving payment from BA. Subsequently, the plaintiff only received USD30,566.40 instead of USD42,314.40 resulting in a shortfall of USD11,748 constituting agent's commission and other charges. The plaintiff's case was that from the date of employment of the defendant until he tendered his resignation, he was involved in the trade finance department of the bank and was in charge of the trade transactions in the Sri Gading branch. The plaintiff submitted that all trade transactions of the branches must be approved by two officers *ie*, a class A and a class B officer. The most senior officer to handle the trade finance transactions at the branch was the assistant branch manager *ie*, the defendant, who was a class A officer. On the contrary, the defendant denied liability for breach of duty and negligence in the handling of the two trade transactions. The defendant contended that the manager of the Sri Gading branch was one Mr Ong Hang Kok and one Ms Evelyn Ong was the senior executive bills officer. As such, the defendant suggested that Mr Ong was responsible for the day to day matters of the bank and thus had personal knowledge of the trade transactions in the bank. The defendant further submitted that from his key responsibilities, he was not solely in charge of the bills department. Rather, it was Evelyn Ong who headed the bills department and all trade documents were solely processed by her. Furthermore, the defendant argued that nowhere was it stated in the job description that the defendant was responsible for the bills department or that he had to ensure that in so far as the trade transactions were concerned, there must not be any risk exposure occurring resulting in the plaintiff suffering loss and damages or that the plaintiff's interest must be protected at all times. The defendant also contended that adverse inference under s. 114(g) of the Evidence Act 1950 ('EA') ought to be drawn against the plaintiff following the failure to call Evelyn Ong

and the branch manager Ong Hang Kok as witnesses. The defendant also contended that in view that the plaintiff had also brought proceedings against Dickson Garment, the plaintiff was barred from making a claim against the defendant for the same amount of money as it would amount to a double claim. The issues that arose for consideration, *inter alia,* were: (i) whether the defendant owed a contractual duty of care to the plaintiff; (ii) whether the defendant had breached his duty of care in handling the two transactions; (iii) whether adverse inference should be invoked against the plaintiff; and (iv) whether the defendant was liable for losses suffered by the plaintiff.

Held (allowing plaintiff's claim with costs):

(1) From the date of employment of the defendant until the defendant tendered his resignation on 22 July 2004, the defendant was involved in the trade finance department of the bank. As an employee of the plaintiff, the defendant owed a contractual duty of care to the plaintiff. A single act of negligence gave rise to a claim either in tort or for breach of contractual terms. This right to damages was also embodied in s. 74(1) of the Contracts Act 1950. (para 8)

(2) All trade transactions of the Sri Gading branch had to be approved by two officers, *ie*, a class A and a class B. Although Evelyn Ong was the head of the bills department, being only a class B officer, she had no authority to approve and must refer all trade transactions or documents to either the defendant or the branch manager being class A officers for approval. As such, it was either the defendant or Ong Hang Kok who had the approving powers and final say in all the trade transactions of the bank. Common law demands that the servant should exercise his proper skill and care in the performance of his duty to his master. In ensuring that the bank would not be exposed to risks from the trade transactions was part and parcel of the common law duty of care of the defendant as an employee to exercise skill and care whilst performing his duties in carrying out the trade transactions. It does not have to be stated as such in the job description. (para 14)

(3) The plaintiff had proved that one of the key responsibilities and duties of the defendant was handling and approving the trade finance transactions of the bills department. As such, he owed a contractual duty of care to the plaintiff to exercise proper skill and care in the performance of his duties in handling and approving the trade finance transactions of the bank. (para 15)

(4) Despite the discrepancies contained in the six inward bills, the defendant released the documents without debiting Dickson Garment's current account. The effect of releasing the documents without receiving payment from Dickson Garment meant that the plaintiff was obliged to pay BOC whether the monies were received from Dickson Garment or not. The plaintiff's operation manual on inward bills collection stated that full payment must be received from the drawee before shipping documents could be released. Thus, the defendant was in breach of his authority and mandate in releasing the documents to Dickson Garment without receiving payment. (para 20)

(5) The plaintiff had proved that the defendant had approved the transactions relating to the first transaction and irregularity. The appearance of the branch manager's signature could not in any way eliminate the fact that it was the defendant that had approved the crediting of the full payment received from the issuing bank into Dickson Garment's account. In so approving, the defendant was negligent in the handling of the first trade transaction and had breached his contractual duty of care. As such, he was liable for the losses suffered by the plaintiff arising from this breach of duty of care. Further, in failing to take into account the agent's commission and other charges when checking and approving the transaction, the plaintiff was in breach of his contractual duty of care to exercise proper skill and care in the performance of his duty as an employee of the plaintiff. Therefore, the defendant was liable for the loss suffered by the plaintiff as a result of the breach of duty of care in handling this second trade transaction. (paras 25 & 27)

(6) Adverse inference could be drawn only if the defendant could prove that the plaintiff was withholding evidence and not merely on account of failure to obtain evidence. The plaintiff did not deem it necessary to call Evelyn Ong because at the material time, she was the defendant's subordinate and had no approving authority. There was also no necessity in calling Ong Hang Kok to testify further on something that was not disputed in the first place. There was no withholding of evidence here on the part of the plaintiff. Therefore, it was not mandatory for the court to invoke s. 114(g) of the EA against the plaintiff. (para 31)

(7) The defendant's liability for any loss incurred by the plaintiff bank arising out of any negligent act on his part was also expressly provided in the letter of employment. It was well settled that if each

of several persons, not acting in concert committed a tort against another person substantially contemporaneously and causing the same or indivisible damage, each tortfeasor was liable for the whole damage. By this principle, the plaintiff was within its rights to sue the defendant. (para 32)

(8) The plaintiff's cause of action against the defendant was founded on breach of contractual duty of care as a result of the negligence of the defendant. It was different from the cause of action against Dickson Garment which was grounded on breach of the credit facilities granted. The plaintiff was not entitled to a double claim if the plaintiff had sued Dickson Garment for the same amount of money and Dickson Garment had obtained judgment for the same before judgment was delivered in the present case. There was no proof of the plaintiff having obtained judgment for the same amount of money that the plaintiff was claiming. Further, there was no application made to strike out the plaintiff's claim on the basis of double claim. (para 33)

Case(s) referred to:

Dingle v. Associated Newspapers Ltd [1961] 2 QB 162 ***(refd)***

Drinkwater v. Kimber [1952] 2 QB 281 ***(refd)***

Edward Owen Engineering Ltd v. Barclays Bank International Ltd [1977] 3 WLR 764 ***(refd)***

Malayan Banking Bhd v. Basarudin Ahmad Khan [2007] 1 CLJ 309 FC ***(refd)***

Munusamy Vengadasalam v. PP [1987] 1 CLJ 250; [1987] CLJ (Rep) 221 SC ***(refd)***

Oli Mohamed v. Keith Murphy & Anor [1969] 1 LNS 122 HC ***(refd)***

RD Harbottle (Mercantile) Ltd v. National Westminster Bank Ltd and Ors [1977] 3 WLR 752 ***(refd)***

United Commercial Bank v. Bank of India and Ors [1981] AIR 1426 SC ***(refd)***

Yeo Choon Huat v. PP [1998] 1 SLR 217 CA ***(refd)***

Yoong Sze Fatt v. Pengkalen Securities Sdn Bhd [2010] 1 CLJ 484 CA ***(refd)***

Legislation referred to:

Contracts Act 1950, s. 74(1)

Evidence Act 1950, ss. 60, 114(g)

For the plaintiff - Caroline George; M/s Anad & Noraini

For the defendant - R Vijayaletchumy; M/s Vijaya Gopal & Assocs

Reported by Sandra Gabriel

JUDGMENT

Supang Lian J:

Introduction

[1] The proceedings in this case arose from a claim by the plaintiff for loss and damages amounting to RM511,146.39 it had allegedly suffered as a result of the defendant's breach of duty in negligently handling trade transactions. The trial of the action took two days. The plaintiff called three witnesses: Saw Leh Peng (PW1), Lim Chwee Lai (PW2) and Nagarajan Periyathamby (PW3); whereas the defendant himself (DW1) was the sole witness for the defence. I delivered decision on 22 December 2010 whereby I had allowed the plaintiff's claim with interest and costs. The relevant cause papers are:

(i) Bundle A – Bundle of pleadings

(ii) Bundle B – Plaintiff's bundle of documents (BOD) Vol 1 (Part A)

(iii) Bundle C – Plaintiff's BOD Vol 2 (Part A)

(iv) Bundle D – Plaintiff's BOD Vol 3 (Part B & C)

(v) Bundle E – Statement of agreed facts

(iv) Bundle F – Issues to be tried

(v) Bundle G – Summary of plaintiff's case

(vi) Bundle H – Summary of defendant's case

(vii) Documentary exhibits proved and tendered:

Exhibit P.1 – pp. 664-667 of bundle D

Exhibit P.2 – pp. 740-776 of bundle D (Investigation Report)

Exhibit P.3 – General tariff of charges

Exhibit P.4 – pp. 734-735 bundle D

Exhibit P.5 – pp. 733 bundle D

Exhibit P.6 – pp. 715 & 718 bundle D

Exhibit P.7 – pp. 720-724 bundle D

Hereinafter, the documents will be referred to by their bundle markings and page numbers. Part A documents are agreed on authenticity and content; Part B agreed on authenticity only and contents disputed;

whereas Part C are disputed on both authenticity and truth of contents. Save for P.2, the investigation report of PW3, the documents marked from P.1 to P.7 were tendered without objection from the defendant.

Brief Factual Background

[2] The plaintiff is a bank incorporated in Malaysia whereas the defendant at all material times was in the employment of the plaintiff serving in the capacity of an assistant branch manager at the plaintiff's Sri Gading branch at Batu Pahat, Johor (hereinafter "the plaintiff's branch" or "the Sri Gading branch"). Pursuant to a letter of 22 July 2004 the defendant tendered his resignation and gave 14 August 2004 as his last day of employment. In the meantime, the plaintiff discovered some discrepancies and irregularities in relation to unpaid trade bills by Sri Dickson Garment Sdn Bhd ("Dickson Garment"), a customer of the plaintiff's Sri Gading branch. An internal audit was carried out following which a report was prepared. The audit uncovered alleged breaches by the defendant of his contractual duties and responsibilities as an assistant manager in handling trade finance transactions involving Dickson Garment that had resulted in financial loss to the plaintiff. As a result, the plaintiff commenced the present action against the defendant.

The Plaintiff's Claim

[3] The plaintiff's claim is premised on the alleged breaches by the defendant of his duty as the assistant branch manager and/or his negligence in handling two trade transactions. In essence, the complaint is that the defendant had failed to follow the plaintiff's bank guidelines and operation procedures as a result of which the plaintiff suffered financial loss. The alleged breaches of duty and/or negligence of the defendant can be summarised as follows:

(i) The defendant, in non-compliance with the plaintiff's operation procedures and standard of an experienced officer, had released shipping documents to Dickson Garment in respect of six inward bills for collection with conditions 'payment at sight' amounting to USD123,787.20 without proof given by Dickson Garment that it had made payment to Zhe Jiang Zhuji Fubang Toys & Shoes Co Ltd China ("Zhe Jiang") *via* its advising bank, the Bank of China ("BOC"), for goods purchased. Following from a demand from BOC, the plaintiff was obliged to settle the sum on 4 September 2004 and Dickson Garment had since then failed to pay the sum to the plaintiff resulting in loss of USD123,787.20 (or RM473,816.04) suffered by the plaintiff; and

(ii) The defendant converted an Export Collection Bill ("ECB") for the sum of USD42,314.40 which was in favour of Dickson Garment sent by the plaintiff's Sri Gading branch to Bank of America, Singapore ("BA") into an Export Negotiation bill ("ENB") and authorised the full sum to be credited into Dickson Garment's current account on 20 January 2004. This was done notwithstanding that payment had not yet been received from BA. Subsequently, the plaintiff received only USD30,566.40 whereby there was a shortfall of USD11,748 comprising commission and other charges that the defendant had failed to take into account when processing the same. This resulted in the plaintiff suffering loss of USD11,748 (or RM36,936.10).

The plaintiff therefore claimed from the defendant a total sum of RM511,147.05 for loss and damages with interest.

The Defendant's Defence

[4] In response, the defendant denied liability for breach of duty and/or in negligence in the handling of the two trade transactions for the reason that the transactions and functions performed in relation to the inward collection bills and the EC which was converted to EN were all in accordance with the rules and practice of the plaintiff and were also processed together by the defendant and the other bills officer Evelyn Ong with the approval of the branch manager. Further, the suit against the defendant alone without including the branch manager and the other bills officer was unsustainable for non-joinder of necessary parties.

The Issues

[5] From the pleadings, the statement of agreed facts (bundle E), the statement of issues to be tried (bundle F) and the case summaries filed by both sides, the issues to be determined at the trial are as follows:

(a) Whether the defendant owed a contractual duty of care to the plaintiff;

(b) Whether the defendant had breached the duty of care in the handling of the first transaction in respect of the six inward bills;

(c) Whether the defendant had breached the duty of care in handling the second transaction in relation to the export collection bill ("EC"); and

(d) If so, what was the quantum of loss of the plaintiff?

Whether The Defendant Owed A Contractual Duty Of Care To The Plaintiff

[6] It is not in dispute that the defendant commenced his employment with the plaintiff on 1 February 1997. In January 2001 he was appointed assistant bank manager at the plaintiff's branch at Sri Gading, Batu Pahat, Johor and served in that capacity until his resignation on 14 August 2004. His letter of employment dated 20 January 1997 together with his working experience and career profile were tendered and marked as exh. P.1 (pp. 664-665 bundle D). Paragraph (ix) of the letter of employment is relevant and it stipulates as follows:

> Liability of Employee
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> You may be held liable for any loss incurred by the bank arising out of or connected with the unauthorized or negligent act on your part and the bank reserves the right to take the necessary action against you to recover such loss.

[7] In *Malayan Banking Bhd v. Basarudin Ahmad Khan* [2007] 1 CLJ 309; [2007] 1 MLJ 613 Arifin Zakaria FCJ, as he then was, stated as follows at p. 622 concerning the issue of contractual duty of an employee:

> [21] On contractual duty of an employee, in *Lister v. Romford Ice and Cold Storage Co Ltd* [1957] AC 555, Viscount Simonds at p 573 observed:
>
> > But in deference to Denning LJ, I think it right to say that I concur in what I understand to be the unanimous opinion of Your Lordships that the servant owes a contractual duty of care to his master, and that the breach of that duty founds an action for damages for breach of contract, and that this (apart from any defence) is such a case. It is trite law that a single act of negligence may give rise to claim either in tort or for breach of a term express or implied in a contract. Of this the negligence of a servant in performance of his duty is a clear example.
>
> [22] And at p. 579 he added:
>
> > The common law demands that the servant should exercise his proper skill and care in the performance of his duty: the graver the consequences of any dereliction, the more important it is that the sanction which the law imposes should be maintained. That sanction is that he should be liable in damages to his master: …

[8] Following from the principle enunciated in the authorities cited above, there is no doubt at all that the defendant as an employee of the plaintiff at the material time, owed a contractual duty of care to the plaintiff the breach of which would render the defendant liable to the

plaintiff in damages for breach of contract. Further, even a single act of negligence may give rise to a claim either in tort or for breach of contractual terms. This right to damages is also embodied in s. 74(1) of the Contracts Act 1950 which provides that "when a contract has been broken, the party who suffers by the breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from the breach …". I therefore found that the defendant as an employee of the plaintiff at the material time owed a duty of care to the plaintiff the breach of which would render him liable in damages for any loss caused.

[9] In determining whether the defendant was in breach of his duty of care, it was necessary to first ascertain his duties and obligations as an employee of the plaintiff. The plaintiff's case is that from the date of employment of the defendant until he tendered his resignation on 22 July 2004, he was involved in the trade finance department of the bank. This is a fact admitted by the defendant under cross-examination. He also stated that from the day he was employed by the plaintiff on 1 February 1997 until 31 March 2002, he was a bills officer. He became the assistant branch manager of the Sri Gading branch on 1 April 2002 and was still involved in trade transactions. As assistant branch manager his key responsibilities are as set out at p. 1 of bundle B. They can be summarised as follows:

(i) Assist the branch manager in achieving the budget of the branch set by management (ie, deposits, non-interest income, profitability etc);

(ii) Manage the administration of the branch;

(iii) Manage the housekeeping of the branch;

(iv) Monitor and manage the cash requirements of the branch;

(v) Provide efficient and effective customer service of the branch;

(vi) Comply with security guidelines/directives set by management;

(vii) Planning and organising of work, monitoring and controlling the staff to ensure the completion of work within the time frame allocated;

(viii) Assist the branch manager in maintaining good office discipline;

(ix) To monitor staff adherence and compliance with all the internal operational manuals/procedures/directives issued by the management and directives issued by the authorities (eg, BNM, assistant branch manager) to prevent frauds/losses; and

(x) Manage the AML compliance function of the branch by acting as the principle interface between the relevant business operation units and the compliance officer of the bank at HQ.

[10] It was not in dispute that the plaintiff's Sri Gading branch was, as the parties had described, a stand-alone branch. PW1 is the head of the plaintiff's Trade Finance Centre based at headquarters in Kuala Lumpur. She gave unchallenged evidence that as a stand-alone branch, the Sri Gading branch processed its customers' trade transactions independently without referring to the regional trade centre or the plaintiff's headquarters in Kuala Lumpur. In fact, so active was the trade transactions of the Sri Gading branch that it was allowed to carry on with its operations despite the centralisation process that resulted in the closure of all the other stand-alone branches. By reason of the stand-alone status, the officers in charge of the trade finance department had to be experienced and knowledgeable of the relevant ICC rules for instance the Uniform Customs and Practice for Documentary Credit (UCP) and the Uniform Rules for Collection. From the staff profile of the defendant (C 654-646), the defendant had experience, technical skill and knowledge of trade financing matters. It is noted at p. 646 that the training courses attended by the defendant included courses on "Export Credit Refinancing Scheme in Johor Bahru" and "Trade Finance Products and Changes to ECR and BA Guidelines". According to PW1, the defendant had the trust and confidence of the plaintiff's senior management then and was given the responsibility to be solely in charge of all trade finance matters in the branch.

[11] At the relevant time, the manager of the Sri Gading branch was Mr Ong Hang Kok and Ms Evelyn Ong was the senior executive bills officer. Learned counsel for the defendant suggested that Mr Ong, was responsible for the day to day matters of the bank and thus had personal knowledge of the trade transactions in the bank. The defendant also gave evidence that all his actions must be condoned by the branch manager. PW1 on the other hand testified that the branch manager was focused on the business, profitability of the branch, hence, the administrative and operations of the branch was left to the assistant branch manager who reported to the manager. There is support for the evidence of PW1 on this as we have seen from the defendant's key responsibilities that it was him that was tasked, amongst others, with managing the administration of the branch; managing its housekeeping; assisting the branch manager in maintaining good office discipline; and monitoring staff adherence and compliance with all internal operational manuals, procedures and directives. All these suggest that the defendant was in charge of the day to day matters of the branch rather than the

branch manager himself. Hence, I doubted very much that the branch manager had personal knowledge of all the trade transactions in the bank as suggested by counsel for the defendant. Also, the defendant's evidence that his actions must be condoned by the branch manager must be seen in this context.

[12] PW1 gave evidence that she had dealings with the defendant on official matters previously, had spoken to him, and had met him when he came to head office for training or meetings. Therefore she knew that the defendant was in charge of the trade transactions in the Sri Gading branch. She said that all trade transactions of the Sri Gading branch must be approved by two officers: a class A and a class B officer. The most senior officer to handle the trade finance transactions at the branch was the assistant branch manager, the defendant, who was a class A officer. He had approving authority and upon approving a trade transaction, he did not have to obtain any further approval from any other officer. Although according to the organisational chart, Evelyn Ong was the senior executive officer of the bills department, she had no approving authority given that she was only a class B officer. She was in fact a "checker". The defendant himself confirmed that all trade transactions of the bank must be approved by a class A and a class B officer and agreed that Evelyn Ong was a class B officer who had no approving authority. PW1's evidence on this was supported by PW3. He was the internal auditor who had audited the Sri Gading branch and prepared the investigation report. He gave evidence that before auditing a branch, preparatory work would be done at the head office where he would be appraised of who are the various officers in charge of the various departments of the branch to be audited. Also, prior to the audit that led to the present report, he had been to the Sri Gading branch on previous occasions for auditing purposes. He therefore had personal knowledge of the fact that the defendant was in charge of the trade finance transactions of the bank.

[13] The defendant submitted that from his key responsibilities, he was not solely in charge of the bills department. Rather, it was Evelyn Ong who was the senior executive officer that headed the bills department and all trade documents were solely processed by her. Furthermore, nowhere was it stated in the job description that the defendant was responsible for the bills department or that he had to ensure that in so far as the trade transactions are concerned there must not be any risk exposure occurring resulting in the plaintiff suffering loss and damages or that the plaintiff's interest must be protected at all times. Under such circumstances, it was not possible for the plaintiff to say that it was the defendant's duty to run the bills department. The defendant submitted that any misdeed in the bills department should be the responsibility of Evelyn Ong.

[14] I found no merit in these arguments. With regard the contention that Evelyn Ong should be held responsible for any misdeed in the bills department because she was the head of that department, even learned counsel for the defendant in the end conceded that Evelyn Ong only processed the trade documents and would have to go to either Ong Hang Kok or the defendant for approval. Moreover, the defendant himself under cross-examination confirmed the following pertinent facts:

(a) From the organisational chart and work sheets adduced as evidence at the trial, he was involved in the trade bills or trade finance division of the bank. He said that was from day one until the date of his resignation from the bank;

(b) That all trade transactions in the bills department must be approved by a class A and a class B officer;

(c) Although Evelyn Ong was the head of the bills department, as a class B officer, she had no authority to approve any trade transaction; and

(d) For that reason, Evelyn Ong, reported either to him or Ong Hang Kok for approval concerning all the trade transactions that she processed or checked.

Thus, I could not accept the contention of the defendant that Evelyn Ong should be made to account for any misdeed in the bills department merely by virtue of her portfolio as the head of that department. As we have seen, in actual fact it was either the defendant or Ong Hang Kok who had the approving powers and final say in all the trade transactions of the bank. In my judgment, if either Ong Hang Kok or the defendant committed any misdeed or acted negligently in carrying out their duties in this respect, they should be held to account and not Evelyn Ong. As for saying that the defendant was not accountable because it was not stated in his job description that he had to ensure that there must not be any occurrence of risk exposure in the trade transactions resulting in loss and damage to the plaintiff, with respect, this is missing the point. As stated earlier, the common law demands that the servant should exercise his proper skill and care in the performance of his duty to his master. In my judgment, ensuring that the bank would not be exposed to risks from the trade transactions is part and parcel of the common law duty of care of the defendant as an employee to exercise skill and care whilst performing his duties in carrying out the trade transactions. It does not, in my view, have to be stated as such in the job description.

[15] From the evidence stated above, I found that all trade transactions of the Sri Gading branch had to be approved by two officers, a class A and a class B. Although Evelyn Ong was the head of the bills department, being only a class B officer, she had no approving authority and must refer all trade transactions or documents to either the defendant or the branch manager being class A officers, for approval. If it was the defendant that was dealing with the document or trade transaction referred by Evelyn Ong, he had final say and he did not have to obtain further approval from any other officer say for instance the branch manager or any one in headquarters for that matter. Thus, in my view, the plaintiff had proved on a balance of probabilities that one of the key responsibilities and duties of the defendant in the bank at the material time was handling and approving the trade finance transactions of the bills department. He therefore owed a contractual duty of care to the plaintiff to exercise proper skill and care in the performance of his duties in handling and approving the trade finance transactions of the bank at all material time.

Whether The Defendant Had Breached The Duty Of Care In The Handling Of The First Transaction In Respect Of The Six Inward Bills

[16] The factual background are these. The Sri Gading branch granted its customer, Dickson Garment, credit facilities amounting to RM2.8 million out of which RM2.3 million comprised of trade finance facilities. Dickson Garment was involved in the manufacturing and trading of garments and very active in trade business. In this first transaction, Dickson Garment was the middleman in that it was selling goods to the buyer which it had sourced from a supplier in China, namely, Zhe Jiang. Upon the application of the buyer, the Bank of East Asia Ltd, New York ("BEA" or the "issuing bank") issued an export letter of credit ("ELC") for USD378,709.13 in favour of Dickson Garment which was valid from 26 March 2003 to 8 October 2003 whereby Dickson Garment, upon compliance of the terms of the ELC, would be paid for the goods it sold to the buyer. The ELC is found at pp. 366-367; 370-371 of bundle B. *Black's Law Dictionary, 7th edition*, defines a letter of credit as an instrument under which the issuing bank, at its customer's request, agrees to honour a demand for payment made by a third party as long as the demand complies with specific conditions. An export letter of credit on the other hand is defined as a commercial letter of credit issued by a foreign bank at a foreign buyer's request in favour of a domestic exporter. BEA had issued the ELC to Standard Chartered Bank, its correspondent bank in Malaysia. The latter then advised Dickson Garment by letter found at p. 372 bundle B that it had received the ELC. Thereafter, Dickson Garment advised the plaintiff's Sri Gading branch to transfer part of the credit under the ELC to

Zhe Jiang through the latter's advising bank, the Bank of China ("BOC") in the sum of USD182,312 and USD29,355.20. PW2, an assistant vice president of the plaintiff who had vast experience as a bills officer of the plaintiff, explained that the difference between a letter of credit ("LC") and a letter of transfer ("LT") is that a letter of credit is an undertaking of payment given by the issuing bank whereas under a letter of transfer, the transferee bank has no undertaking to pay unless the latter receives payment from the issuing bank. Thus, in the present transaction, once the plaintiff's Sri Gading branch received payment from the issuing bank, it was obliged under the LTC to pay BOC for any demand for payment made under the LTC.

[17] In the instant case, the ELC was received by the Sri Gading branch where the defendant together with Evelyn Ong signed the same as can be seen at p. 366 bundle B. PW3 gave evidence that this meant that the defendant was the officer in charge of advising Dickson Garment on the ELC whereas Evelyn Ong was the trades officer that assisted him. The Sri Gading branch pursuant to Dickson Garment's instructions *vide* Transfer Letter of Credit ("TLC") bearing reference No. 037LTA0390002 (at pp. 394-396 bundle C) and No. 037LTA0390008 (at pp. 484-487 bundle C) transferred part of the credit under the ELC to Zhe Jiang, the supplier, *vide* BOC, the supplier's bank. PW3 gave evidence that the sequence of events that should follow thereafter are these:

(i) Upon receipt of the TLC the supplier would prepare the goods for shipment and upon shipment, the supplier would present the necessary documents as required under the TLC to BOC. BOC would then process and forward the documents to the plaintiff;

(ii) Upon receipt of the documents from BOC, the Sri Gading branch would advise Dickson to substitute documents by providing it with the relevant documents such as invoices and the bill of exchange. Upon receipt of the substituted documents, the Sri Gading branch would forward all the documents to BEA (the issuing bank) for payment;

(iii) The issuing bank, upon receipt of the documents, would check the documents against the original ELC and if there were no discrepancies, would honour the documents presented and made payment to the plaintiff; and

(iv) Once the plaintiff received payment from the issuing bank, it would pay BOC the sums amended under the TLC which was the purchase price of the goods and the balance would be credited into Dickson Garment's account.

[18] PW3 testified that in matters involving trade bills transactions, there are rules to be adhered to. With regard transfer of credit, the relevant rules are the UCP 500 whilst in relation to bills collection it is the URC publication 522. In addition, the plaintiff had issued memorandum and its own operation manual on bills for collection and set out standard procedures to be adopted and used by all of the plaintiff's trade officers: found at pp. 3-16 bundle C. It will be recalled that part of the responsibilities of the defendant as assistant branch manager was to monitor staff adherence and compliance with all the internal operational manuals or procedures or directives issued by management as well as by the relevant authorities.

[19] The Sri Gading branch received a total of nine inward collection bills from BOC on behalf of Zhe Jiang under the two TLCs Nos. 037LTA0390002 ("the first TLC") and 037LTA0390008 ("the second TLC"), above. PW2 explained that 'collection' means the handling by banks of documents in accordance with instructions received in order to obtain payment. The first TLC was for the sum of USD182,312. Under this TLC the Sri Gading branch received three inward collection bills on 7 July 2003 amounting to USD69,888: found at pp. 51-72 bundle B. The defendant processed these three bills and when the shipping documents were released to Dickson Garment, payment was made by debiting the latter's current account on the same day and then remitted to BOC. There are no issues with regard these three bills. The plaintiff's branch subsequently received four more inward collection bills from BOC under the first TLC on 22 July 2003 for the sum of USD23,608 each (totalling USD94,432): found at C 429-438; 440-451; 456-466; 468-480. These four bills contained discrepancies, as such, the plaintiff's branch sent refusal notices *via* SWIFT to BOC on 22 July 2003 refusing the documents and payment: found at C 431, 447, 461 and 474. The second TLC was for USD29,355.20. Under this TLC the plaintiff's branch received two inward collection bills on 27 August 2003 amounting to USD9,968 and USD19,387.20 respectively (totalling USD29,355.20): found at C 493-502; 505-515. These two bills also contained discrepancies, hence, the plaintiff's branch sent refusal notice *via* SWIFT to BOC on 27 August 2003 refusing the documents and payment: found at C 509 and 498.

[20] The six bills described above were processed by the defendant (C 433, 448, 464, 477, 499 and 510) where he approved the six bills by way of work sheets. It will be recalled that bundle C documents are all part A agreed on authenticity and content. PW3 explained that a work sheet is basically a document containing the workings based on documents submitted. The worksheet would state the discrepancies and

approve and verify the transactions. At the trial, the defendant drew attention to the fact that Evelyn Ong checked almost all of the documents and submitted that she was responsible and not the defendant. I did not accept this argument. As will be recalled, I have earlier found it established that Evelyn Ong was merely a 'checker' with no approving authority. In any event, the defendant himself admitted that he would also go through the same documents that Evelyn Ong went through when approving the transactions. Despite the discrepancies contained in the six bills, the defendant released the documents without debiting Dickson Garment's current account. The defendant under cross-examination admitted to this. PW3 testified that the effect of releasing the documents without receiving payment from Dickson Garment meant that the plaintiff was obliged to pay BOC whether the monies were received from Dickson Garment or not. The plaintiff's operation manual on inward bills collection s. B5.1 states that full payment must be received from the drawee (Dickson Garment here) before shipping documents can be released. Thus, the plaintiff submitted, and a submission which I accepted, that the defendant was in breach of his authority and mandate in releasing the documents to Dickson Garment without receiving payment first.

[21] The defendant had admitted as well, under cross-examination, that the normal practice of the plaintiff was that the current account must be debited upon release of the documents. However, this was not done when the documents in relation to the six bills were released to Dickson Garment. The plaintiff submitted that the defendant in failing to debit the current account before releasing the documents had acted contrary to the normal practice. The defendant's action was the more aberrant given that for the earlier three bills, the current account was debited on the same day upon release of the documents. The plaintiff therefore submitted that the defendant knowingly breached the plaintiff's procedure in releasing the documents to Dickson Garment without first receiving payment. The defendant explained during cross-examination that he released the documents because he had to release the bill of lading. However, both PW2 and PW3 gave evidence that this was not the proper procedure as under the UCP 500 rules and guidelines, the bill of lading is not one of the documents that can be substituted. The defendant had merely made a bare denial of their evidence without adducing contrary evidence. From the foregoing, I found that the defendant was also knowingly in breach of the plaintiff's procedure for releasing documents.

[22] PW3 gave evidence that the Sri Gading branch did eventually receive the substituted documents from Dickson Garment where the documents were processed and sent to BEA for payment on 7 August 2003, 8 August 2003 and 11 September 2003 amounting to USD192,404.50. Dickson Garment then requested the plaintiff to finance three export bill collection ("EBC") for the full sum of USD192,404.50 and to convert the EBC into an export bill negotiated ("EBN"). The defendant approved this financing. After the conversion was done, the defendant caused Dickson Garment's current account to be credited for the full sum of USD192,404.50 on 7 August 2003, 8 August 2003 and 11 September 2003. These transactions were authorised and validated by the defendant as can be seen from the three working sheets for the three EBN transactions at pp. 677, 690 and 708 bundle D and signed by the defendant. PW3 testified that the full sum of USD192,404.50 should not have been credited into Dickson Garment's account. This is because the sum should have been used to pay BOC (where the amount due was USD123,787.20) and the balance only to be credited into Dickson Garment's account. PW3 said that payment should be made to BOC as the issuing bank, BEA, had already made payment. It will be recalled that the plaintiff upon receipt of payment from the issuing bank had to make payment to BOC for the sums demanded under the TLC.

[23] In his defence, the defendant said that payment was not made to BOC because there was a dispute between Dickson Garment and Zhe Jiang resulting in Dickson Garment stopping the plaintiff's branch from making payment to BOC. However, the defendant gave evidence that there was no actual letter from Dickson Garment requesting the plaintiff's branch to stop payment. In *United Commercial Bank v. Bank of India and Ors* [1981] AIR 1426, the Supreme Court of India held that a bank issuing or confirming a letter of credit is not concerned with the underlying contract between the buyer and seller. Duties of a bank under a letter of credit are created by the document itself. Thus the bank's customer cannot instruct the bank not to pay. Similarly in *RD Harbottle (Mercantile) Ltd v. National Westminster Bank Ltd and Ors* [1977] 3 WLR 752, the court held that banks are not concerned with the rights or wrongs of the underlying dispute but only with the performance of the obligations which they themselves have confirmed. Thus, I accepted the submission of the plaintiff that the dispute between Dickson Garment and the supplier in China (Zhe Jiang) was separate from the plaintiff's obligation under the TLC. I found it proved that under the circumstances, the plaintiff's obligation was to make payment to BOC under the TLC once payment was received from the issuing bank (BEA). In view that the plaintiff had received the payment from BEA, payment must be made to BOC.

[24] On 11 August 2004 the plaintiff received a SWIFT message from BOC regarding the non-payment: found at B107-108. The plaintiff eventually made full payment to BOC because it had to honour the payment. Furthermore, BOC's customer, Zhe Jiang (the supplier) was entitled to payment especially that the goods were already delivered and payment had been received from BEA. Evidence of such payment can be seen from the SWIFT messages sent by the plaintiff to BOC at C823-825. PW3 when cross-examined explained that irrespective of the dispute and the fact that one of Dickson Garment's partners had died, once the plaintiff had given an undertaking to make payment, it had to be made. Bearing in mind that the Sri Gading branch had in fact received payment from BEA, the payment due to BOC ought to have been forwarded to BOC. In *Edward Owen Engineering Ltd v. Barclays Bank International Ltd* [1977] WLR 764, the court held that the bank must pay according to its obligations, without proof or conditions. The court could not interfere with the obligations of the bank.

[25] From the foregoing, my conclusion on this issue are as follows. I found that the plaintiff had proved from the worksheets at D677, 690 and 708 that the defendant had approved the transactions relating to this first transaction and irregularity. It is to be noted that the defendant had never denied or challenged the evidence of PW3 that he together with Evelyn Ong had prepared those worksheets. The fact that the branch manager had signed on the worksheets did not mean that he approved the transaction. What was approved by the branch manager was the "negotiation" ie, whether payment should be advanced. Furthermore, the defendant admitted under cross-examination that the branch manager in any case had to approve the EBN. Thus the appearance of the branch manager's signature could not in any way eliminate the fact that it was the defendant that had approved the crediting of the full payment received from the issuing bank into Dickson Garment's account. In so approving, and for the reasons stated above, I found the defendant was negligent in the handling of the first trade transaction and had thereby breached his contractual duty of care. Accordingly, he was liable for the loss suffered by the plaintiff arising from this breach of duty of care.

Whether The Defendant Had Breached The Duty Of Care In Handling The Second Transaction In Relation To The Export Collection Bill ("ECB")

[26] The second transaction relates to an export collection bill (ECB) bearing reference no. 037ECA0490063 for USD42,314.40 in favour of Dickson Garment: the document is D 734-735 (exh. P.4). The Sri Gading branch sent the ECB to Bank of America, Singapore ("BA") for payment to be made for the benefit of Dickson Garment. However, the ECB was converted into an export negotiation bill (EBN) bearing

reference number 037 ENA 0490045 on 20 January 2004, where the plaintiff's branch advanced and credited the full sum of USD42,314.40 into Dickson Garment's current account on 20 January 2004, without first receiving payment from BA. As can be seen from the document D 733 (exh. P.5), it was the defendant that had processed this transaction. Subsequently, the plaintiff only received USD30,566.40 on 13 March 2004 instead of USD42,314.40 resulting in a shortfall of USD11,748 constituting agent's commission and other charges. PW3 gave evidence that the defendant should have taken into account these charges when processing the same. The defendant admitted under cross-examination that the normal practice of the Sri Gading branch was to take into account these charges. In denying liability for this transaction, the defendant highlighted that the document was sent to the branch manager for approval. The defendant submitted that the branch manager should therefore be liable. However, as explained by PW3 under cross-examination, what was approved by the bank manager was the negotiation where money is advanced before payment is received. Thus, in effect, what the branch manager had done was to approve the negotiation ie, the advancement of money before receipt of payment. This did not detract from the fact that it was the defendant that had credited the full sum of USD42,314.40 into Dickson Garment's current account without first receiving payment from BA.

[27] It is noteworthy that the defendant himself admitted under cross-examination that although it was Evelyn Ong that had processed this EBN, it was him that had checked it in his capacity as a class A officer. As stated earlier, the defendant had final say in trade finance transactions which he had checked or approved as a class A officer. In my judgment, in failing to take into account the agent's commission and other charges when checking and approving the transaction, the plaintiff was in breach of his contractual duty of care to exercise proper skill and care in the performance of his duty as an employee of the plaintiff. I therefore found and held defendant liable for the loss suffered by the plaintiff as a result of the breach of duty of care in handling this second trade transaction.

Issues Raised By The Defendant

[28] The defendant complained that PW1 and PW3 had no personal knowledge of the workings of the Sri Gading branch as they were not attached to the branch at the material time. According to the defendant, their evidence was based on what should have been the normal practice and procedures of the plaintiff under normal practice of a trade business. Their evidence was thus based more on hypothesis or their own opinion and there was no evidence on what the defendant did or neglected to do that led to the claim against him. With respect, this argument is

fallacious as it ignores the fact that PW1 was a vice president of the plaintiff and headed the Trade Finance Centre at the plaintiff's headquarters since April 2005. Prior to this, she was the head of the bills department at the plaintiff's main branch at Kuala Lumpur. Thus, her evidence and opinion on the workings of the trade transactions of the plaintiff was within her field of expertise and experience and thus relevant. In any event, she had testified of having met and spoken with the defendant when he went to headquarters for training purposes and thus had personal knowledge that he was in charge of the trade transactions at the Sri Gading branch. As for PW3, he obviously had firsthand knowledge because he actually went to the Sri Gading branch to investigate and carry out internal auditing not only on this particular occasion that led to the present suit being filed but on previous occasions. He interviewed the employees of the bank, had access to the relevant trade transactions documents, the relevant work sheets and a host of other documents the large part of which were included as part A documents in the BOD marked bundle B and bundle C. Some are included in the BOD marked bundle D as part B documents and the rest proved at the trial and marked as exhibits without objection from the defendant. Thus, there was no merit in the defendant's contention that PW3's evidence was mere hypothesis as he testified from personal knowledge and from the documentary evidence. I accepted his evidence. It is to be noted that PW3's evidence that the defendant had either prepared, checked or approved Evelyn Ong's work process on the relevant trade transaction documents was never challenged nor proven to be otherwise. In addition, the defendant in his evidence never denied he had worked on, or checked or approved the material trade transaction documents in relation to the six inward bills and the export collection bill. For these reasons, I rejected the argument of the defendant on this.

[29] The defendant also objected to the admissibility of the investigation report of PW3 (P.2: D 740-776) on the grounds it contained hearsay evidence. The defendant submitted that the report offends s. 60 of the Evidence Act and referred to *Yoong Sze Fatt v. Pengkalen Securities Sdn Bhd* [2010] 1 CLJ 484. The Court of Appeal held at p. 505: "As an opinion evidence, the expert must come to court to give evidence. Section 60(1)(d) of the Evidence Act 1950 ('Act') states that direct oral evidence must be given in respect of the opinion of any person. Thus, in the absence of such direct evidence from the "expert" his report could not in law be admissible as evidence. The lack of opportunity to cross-examine the "expert" on his report was another ground to disregard the "expert's" report." To my mind, the situation in our present case is different. The maker of the report, PW3, gave evidence regarding his report and the report was tendered at the trial.

Furthermore, the defendant was given the opportunity to cross-examine PW3 on his report. Thus, I accepted the submission of the plaintiff that the report was not contrary to s. 60 of the Evidence Act and was rightly admitted as evidence.

[30] In any event, the case for the plaintiff and the proof of it was not based on the investigation report of PW3. The case for the plaintiff was based on the evidence of PW1, PW2 and PW3 on the workings of the trade transactions or bills department of the plaintiff bank combined with the documentary evidence. As we have seen these are witnesses who had vast knowledge and experience in this field and are thus well positioned and competent to give evidence on this. The documentary evidence on the other hand were the relevant and material trade transaction documents which were mainly part A documents, agreed on authenticity and content; some were part B documents (agreed on authenticity) and the part C documents were tendered through PW3 without objection from the defendant (save for the Investigation Report of PW3) and marked as exhibits. PW3 was never challenged nor proven to be wrong whenever he testified that a particular material trade transaction document in relation to the six inward bills and the ECB was prepared, checked or approved by the defendant. The defendant himself had singularly not denied or disputed the documents whenever referred to him during cross-examination. Thus, I found no merit in the objections and complaint of the defendant in relation to this.

[31] The defendant next contended that adverse inference under s. 114(g) of the Evidence Act ought to be drawn against the plaintiff following the failure to call Evelyn Ong and the branch manager Ong Hang Hock as witnesses. It is well settled that an adverse inference could be drawn only if the defendant could prove that the plaintiff was withholding evidence and not merely on account of failure to obtain evidence (see *Munusamy Vengadasalam v. Public Prosecutor* [1987] 1 CLJ 250; [1987] CLJ (Rep) 221; [1987] 1 MLJ 492; *Yeo Choon Huat v. PP* [1998] 1 SLR 217 CA). It was therefore not mandatory for the court to invoke s. 114(g) if a witness is not called. The crucial question was whether the witness is indispensable to proving the plaintiff's case on balance of probabilities, the standard in civil proceedings. The plaintiff did not deem it necessary to call Evelyn Ong because at the material time she was the defendant's subordinate and had no "approving" authority. She was, as the defendant conceded, only a 'checker'. As for Ong Hang Hock, whenever he was involved in any of the material trade transaction documents produced at the trial, invariably it was the defendant himself that had pointed it out. Thus there was no necessity in calling Ong Hang Hock to testify further on something that was not disputed in the first place. In any case, the defendant himself confirmed that Ong Hang Hock had since resigned from the plaintiff bank and was

in fact in contact with him on the telephone after his resignation. To my mind, quite clearly, there was no withholding of evidence here on the part of the plaintiff. Thus, in my judgment, there was no question of drawing any adverse inference under s. 114(g) against the plaintiff on account of this.

[32] With regard the non-joinder of Ong Hang Hock and Evelyn Ong, in my judgment, it was up to the defendant to commence third party proceedings against them or apply to make them as co-defendants if he thought they ought to be held liable as well. The plaintiff's cause of action against the defendant is founded in negligence in the performance of his duties which is a breach of his contractual duty of care. As we have seen, the defendant's liability for any loss incurred by the plaintiff bank arising out or connected with any negligent act on his part is also expressly provided in para. (ix) of the letter of employment (see D 664-665). It is well settled that if each of several persons, not acting in concert commits a tort against another person substantially contemporaneously and causing the same or indivisible damage, each tortfeasor is liable for the whole damage: see *Oli Mohamed v. Keith Murphy & Anor* [1969] 1 LNS 122; [1969] 2 MLJ 244 following *Dingle v. Associated Newspapers Ltd* [1961] 2 QB 162 and *Drinkwater v. Kimber* [1952] 2 QB 281. By this principle, the plaintiff in my judgment was within its rights to sue the defendant.

[33] The defendant also contended that in view that the plaintiff had also brought proceedings against Dickson Garment, the plaintiff was barred from making a claim against the defendant for the same amount of money as it was tantamount to a double claim. The answer to this is that the plaintiff's cause of action against the defendant founded on breach of contractual duty of care as a result of the negligence of the defendant is different from the cause of action against Dickson Garment which is grounded on breach of the credit facilities granted. To my mind, if the plaintiff was proven to have sued Dickson Garment for the same amount of money and Dickson Garment had obtained judgment for the same before judgment was delivered in the present case, then I think there would be valid reason for saying that the plaintiff was not entitled to a double claim. As it were, there was no proof of the plaintiff having obtained judgment elsewhere for the same amount of money that the plaintiff was claiming. In any event, if the defendant was serious in pursuing this line of argument, I did not understand why there was no application made to strike out the claim or action of the plaintiff on that ground much earlier on rather than let the matter go for full trial. In the circumstances, I found no merit in this last point raised by the defendant.

Conclusion

[34] In relation to the first transaction, the defendant's failure to forward the payment due to BOC had caused the plaintiff to suffer loss in that it had to pay USD123,787.20 to BOC. Going by the exchange rate of RM3.825 per USD as at 14 August 2004, this is the equivalent of RM473,486.04. In this regard, the plaintiff also claimed for cable charges in the sum of RM330 incurred from the SWIFT messages between BOC and the plaintiff. There were altogether 11 SWIFT messages at the cost of RM30 each. These are marked exh. P.3. Thus, the total loss suffered by the plaintiff in relation to the first transaction was RM473,816.04. With regard the second transaction, the plaintiff had credited USD42,314.40 into Dickson Garment's account and only received payment of USD30,566.40 leaving a shortfall of USD11,748 which was equivalent to RM44,936.10 as at 29 April 2004. The plaintiff eventually received three cheques for RM4,000 each from Dickson Garment towards payment of the shortfall: see C 836-827. Two of the cheques cleared but not the third. The plaintiff had thus received RM8,000 from Dickson Garment leaving a balance of RM36936.10 owing. In my view this is the proved loss of the plaintiff arising from the breach of duty of care of the defendant in handling the second transaction. Thus, the total sum of loss suffered by the plaintiff was RM511,146.39. The defendant had not challenged the quantum of the loss suffered; nor adduced evidence to prove otherwise.

[35] In conclusion, for the reasons stated above, I found on the pleadings, the evidence adduced and matters arising at the trial and raised in the submissions of learned counsels for both sides that the plaintiff had proved on balance of probabilities its case that the defendant was negligent in the handling and approving of the two trade transactions referred to above by failing to follow the plaintiff's guidelines and procedures. As such, the defendant had breached his duty of care, authority and mandate as the assistant branch manager of the plaintiff and liable to the loss suffered by the plaintiff as a consequence of the breach. Accordingly, I allowed the claim of the plaintiff and entered judgment against the defendant for the sum of RM511,146.39 with interest at 8% p.a. on the judgment sum from the date of the action to date of satisfaction and with costs to be taxed unless agreed.